# Abdul Manaf bin Ahmad v Mohd Kamil Datuk Mohd Kasim

HIGH COURT (SANDAKAN) — SUIT NO T(22)16 OF 2001
LINTON ALBERT JC
26 AUGUST 2004

*Civil Procedure — Action — Limitation period — When did cause of action accrue — Burden of proof — Whether onus on plaintiff to prove action commenced within time — Whether action statute-barred — Sabah Limitation Ordinance (Cap 72) s 3*

*Tort — Defamation — Proceedings — Action for defamation and malicious falsehood — Limitation period — Burden of proof — Whether onus on plaintiff to prove action commenced within time — Whether action statute-barred — Sabah Limitation Ordinance (Cap 72) s 3*

The plaintiff and defendant were members of the Tawau Native Timber Co-operative Society ('the Co-operative'. He sought damages for defamation against the defendant who had made a police report accusing the plaintiff of misappropriating moneys belonging to the Co-operative. The main issue before this court was whether his claim was beyond the limitation period as prescribed by the Sabah Limitation Ordinance ('the Ordinance').

**Held**, dismissing the plaintiff's action:

(1) The onus is on the plaintiff to prove that his action for defamation and malicious falsehood occurred within the period set out in the Ordinance (see para 4).

(2) The plaintiff's cause of action accrued in 1987, when the words complained of were published at the time they were recorded in the police report and damages to the plaintiff ensued at the annual general meeting of the Co-operative on 23 August 1987. However, by commencing the action 16 years after the expiry of the limitation period, it was caught by s 3 of the Ordinance (see paras 8, 10 and 11).

[**Bahasa Malaysia summary**

Plaintif dan defendan merupakan ahli kepada Kesatuan Koperatif Kayu Balak Anak Watan Tawau ('Koperatif tersebut'). Dia menuntut ganti rugi untuk fitnah, terhadap defendan yang telah sebelum ini membuat aduan polis menuduh plaintif melesapkan wang Koperatif. Isu utama di hadapan mahkamah ini adalah sama ada tuntutannya berada di luar had masa seperti yang diperuntukkan oleh Ordinan Hadmasa Sabah ('Ordinan tersebut')

**Diputuskan**, menolak tindakan plaintif dengan kos:

(1) Beban bukti terletak pada plaintif untuk membuktikan bahawa tindakan fitnah dan kepalsuan niat jahat dimulakan dalam lingkungan had masa seperti yang diperuntukkan di dalam Ordinan tersebut (lihat perenggan 4).

(2) Kuasa tindakan plaintif terakru dalam tahun 1987, bila perkataan-perkataan yang diadukan terpapar semasa ia direkodkan di dalam aduan polis dan ganti rugi kepada plaintif terhasil pada perhimpunan umum tahunan Koperatif pada 23 Ogos 1987. Akan tetapi, dengan memulakan tindakan 16 tahun selepas penamatan tempoh had masa, ia dihalang oleh s 3 Ordinan tersebut ((lihat perenggan 8, 10 dan 11).]

**Notes**

For cases on limitation, see 2(3) *Mallal's Digest* (4th Ed, 2001 Reissue) paras 138–141.

For cases on defamation proceedings, see 12 *Mallal's Digest* (4th Ed, 2002 Reissue) paras 468–469.

**Cases referred to**

*Credit Coporation (M) Bhd v Fong Tak Sin* [1991] 1 MLJ 409 (folld)
*Ong Ah Bee v Hii Chung Siong, Robin* [1993] 1 CLJ 504 (folld)
*Wong Yoke Cheng & Ors v Lai Siew Wah Sdn Bhd and Another Appeal* [1998] MLJU 439 (refd)

**Legislation referred to**

Sabah Limitation Ordinance (Cap 72) s 3, Items 11, 12, 20 of Schedule

*Alice Imelda Chin (Alice Imelda Chin) for the plaintiff.*
*Mirdin Mamdin (Chin Mirdin and Co) for the defendant.*

**Linton Albert JC**:

**[1]** The plaintiff and defendant are members of the Tawau Native Timber Co-operative Society ('the Co-operative'). The dispute arose in 1985 when the plaintiff was then the honorary treasurer and the defendant a member of the committee called 'Lembaga Jawatankuasa Pentadbir' ('the committee') which managed the affairs of the Co-operative. On 29 July 1987, the defendant lodged a police report which accused the plaintiff together with one Siddek bin Zainal who was then the chairman of the committee, of misappropriating RM200,000 belonging to the Co-operative.

**[2]** The plaintiff now claims damages against the defendant for defamation and malicious falsehood. The defendant pleaded the defence of limitation. It is, therefore, appropriate to deal with this issue at the outset because if the defendant succeeds, that will be the end of the matter, as it will not then be necessary to consider the merits of the plaintiff's claim (see *Wong Yoke Cheng & Ors v Lai Siew Wah Sdn Bhd and Another Appeal* [1998] MLJU 439).

**[3]** In *Ong Ah Bee v Hii Chung Siong, Robin* [1993] 1 CLJ 504 Steve Shim Lip Kiong J (as he then was) stated at p 505 the relevant principle to be applied:

Now it has been held that when the defence of limitation is raised, the burden of pleading and proving that the action was brought within the limitation period shifts to the plaintiff. In *Cartledge v E Jopling & Sons Ltd* [1963] 1 All ER 341, Lord Pearce said:

> 'I agree that when a defendant raises the statute of limitation the initial onus is on the plaintiff to prove that his cause of action occurred within the statutory period. When, however, a plaintiff has proved an accrual of damages within the six years the burden passes to the defendants to show that the apparent accrual of a cause of action is misleading and that in reality the cause of action accrued at an earlier date.'

**[4]** Hence, it is for the plaintiff to prove that his action for defamation and malicious falsehood occurred within the period set out in the Sabah Limitation Ordinance (Cap 72).

**[5]** In response to the defendant's pleaded defence that the plaintiff's action was statute-barred the plaintiff in para 15 of the re-amended reply made the following averment:

> Paragraph 17 of the Re-Amended Defence is unsubstantiated and vague, the same of which bears no reasonable defence or at all.

**[6]** Learned counsel for the plaintiff in her written submission, argued that it was only after the plaintiff had received the letter from the Jabatan Peguam Negara that "the plaintiff was at liberty to commence an action against the Defendant". The letter from Jabatan Peguam Negara which was dated 13 October 2000 (exh P 12) exonerated the plaintiff and confirmed that the police investigation into the alleged misappropriation in the police report was finally closed. Although it was not specifically addressed in the written submission of learned counsel for the plaintiff, the irresistible inference is that time, according to plaintiff, began to run from the date of the letter from the Jabatan Peguam Negara and since the plaintiff's action was commenced in March 2001, less than six months after the date of the letter from the Jabatan Peguam Negara, it was contended for the plaintiff, that the action was brought well within the relevant period of limitation provided under the Sabah Limitation Ordinance (Cap 72). Counsel for the defendant, Mr Mirdin Mamdin on the other hand, contended that the plaintiff's cause of action in defamation arose in 1987 when the police report was lodged by the defendant and for malicious prosecution, the cause of action accrued in 1992 when the police notified the plaintiff that the case was closed.

**[7]** The question when a cause of action accrues was dealt with by the Supreme Court in *Credit Corporation (M) Bhd v Fong Tak Sin* [1991] 1 MLJ 409. Delivering the judgment of the Supreme Court, Hashim Yeop Sani CJ (Malaya) reviewed the authorities and at p 411 concluded thus:

> From established authorities we can now accept that the cause of action normally accrues when there is in existence who can sue and another who can be sued, and when all the facts have happened which are material to be proved to entitle the plaintiff to succeed.

**[8]** It is patently clear that the plaintiff's cause of action accrued in 1987, when the words complained of were published at the time they were recorded in the police report and damages to the plaintiff ensued at the annual general meeting of the Co-operative on 23 August 1987 where the plaintiff's alleged misappropriation of the Co-operative's funds featured prominently with photo copies of the very cheque which figured the plaintiff as the payee of RM200,000 representing the sum misappropriated, widely distributed, seriously damaging his reputation. Not surprisingly, the plaintiff was not elected to the committee which subsequently elected the defendant as the honorary treasurer and the defendant's father, one Datuk Hj Mohd Kassim as chairman. The respective posts in the Co-operative were held by both father and son continuously since then. The limitation period stipulated for defamation in the Sabah Limitation Ordinance (Cap 72) comes under Items 11 and 12 in the Schedule which are as follows:

Part I:

| Description of Suit | Period of Limitation | Time from which period begins to run |
|---|---|---|
| 1.1 For compensation for libel | One year | When the libel is published |
| 1.1 For compensation for slander | One year | When the words are spoken, or if the words are not actionable in themselves, when the special damage complained of result |

**[9]** Malicious falsehood comes under Item 20 of the Schedule:

| Description of Suit | Period of Limitation | Time from which period begins to run |
|---|---|---|
| 20. For compensation for any malfeasance, misfeasance or non-feasance independent of contract and not herein specially provided for | One year | When the malfeasance, misfeasance or non-feasance takes place |

**[10]** The plaintiff's action having been commenced 16 years after the expiry of the limitation period for defamation and malicious falsehood, is inevitably caught by s 3 of the Sabah Limitation Ordinance (Cap 72) which reads:

> Subject to sections 4 to 24, every suit instituted after the period of limitation prescribed therefore by the Schedule shall be dismissed.
>
> Provided that limitation has been set up as a defence.

**[11]** There is, therefore, merit in the defendant's pleaded defence that the plaintiff's claim is statute-barred.

**[12]** For the reasons aforesaid, the plaintiff's action is accordingly dismissed and costs to be paid by the plaintiff to the defendant, such costs to be taxed unless agreed.

*Plaintiff's action dismissed with costs.*

Reported by M Maheswaran